

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6018 of 1996

With

SPECIAL CIVIL APPLICATION NO. 6138 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 - NO)

ANURAG CO OPERATIVE HOUSING SOCIETY LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR MC BHATT for Petitioner in both the petitioners
MR S.P.DAVE, LD.GOV.T.COUNSEL for Respondents in both
the petitions.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 11/02/97

ORAL JUDGEMENT

The present orders shall govern the disposal of these two petitions.

Concentrating upon the Special Civil Application No. 6138 of 1996, the following fact situation requires

to be appreciated. Annexure-B to the petition would be the orders dated 16th January 1993, which say that the allottees of the residential units constructed by the petitioner in a Scheme under Section 21 of the Urban Land (Ceiling & Regulation) Act 1976, not all, but some, have put up certain constructions in front of their units and that, those small constructions were being utilised for the commercial purposes. This orders further say that the area being meagre it would be appropriate if the above said user for the commercial purposes of some of the units in part is recognised. This orders therefore dated January 16, 1993 recognises that, only in some units this difficulty had arisen and that, ultimately the Competent Authority & Addl. Collector, ULC, Vadodara, was of the opinion that, regard being had to the facts & circumstances of the case, including the small portion being used for commercial purposes, nothing was required to be done, and the said user was required to be regularised. Any how there were the orders dated 9th May 1994 available at Annexure-E saying that, the above said activity was not permissible and therefore the orders of the Competent Authority dated 16th January 1993 were required to be cancelled by the Government under Section 34 of the Urban Land (Ceiling & Regulation) Act, 1976. Any how, there are the orders dated 4th January 1995 available at Annexure-F saying that, the above said orders passed by the Secretary (Appeals) require to be quashed and set aside. It was ordered accordingly. Therefore under this orders once again the earliest order dated 16th January 1993 came to be revived, which are of course in favour of the holders of the unit. But once again the Deputy Secretary, Revenue Department, Govt. of Gujarat, has issued a communication dated 23rd July 1996 available at Annexure-G. This appears to be a simple communication or a show cause notice on a primary reading of the same. But the real intent could be gathered from a careful reading of this Annexure-G which is under challenge. It would go to show that, though under the orders dated 4th January 1995, the earlier orders dated 16th January 1993 are cancelled and the orders dated 16th January 1993 are ordered to be revived, this position has not been accepted in this Annexure-G. On the contrary, it has been said that the above said orders which were in favour of the holders of the units have been cancelled. After having reached this conclusion, the Dy. Secretary calls upon the petitioner to show cause as to why the earlier orders in favour of the unit holders should not be quashed and set aside. This document at Annexure-G therefore in the first part is recognising a situation against the unit holders and later on calls upon the petitioner to show cause as to why the earlier orders in

favour of the unit holders should not be cancelled or deleted. While doing so, it is apparent that the Dy. Secretary has missed to notice the orders dated 4th January 1995 Annexure-F which says very clearly that the orders dated 9th May 1994 are quashed and set aside. Therefore it is clear that all what was done in favour of the petitioner in the earlier proceeding is sought to be set at naught by this order cum notice.

Learned Govt. Counsel Mr. S.P. Dave was not in a position to defend this action on the part of the Government, under which repeatedly the very same authority passes and proposes to pass fresh orders on the same issue which has been concluded in favour of the unit holders in past. This could not have been done and therefore the interference in the above said proposition issued by the Government appears to be justifiable. This petition therefore requires to be allowed. The same is hereby accordingly allowed and the orders cum show cause notice dated 23rd July 1996 at Annexure-G is hereby quashed and set aside. The net effect would be that the use and occupation of some of the unit holders of some meagre portion of their units as the commercial premises shall stand regularised under the earlier orders. Rule is made absolute to the above said extent.

In Special Civil Application No. 6018 of 1996 the fact situation happens to be slightly different. Firstly there were the orders dated August 28, 1992, available at Annexure-F, saying that the commercial use made by some of the unit holders qua small portion of the premises requires to be regularised. That has been done under this orders. Annexure-G dated December 11, 1992 is in respect of the additional construction of certain flats on the land. It is made clear by the Competent Authority that, regard being had to the change fact situation the petitioner was being permitted to construct certain other flats. Any how under the communication dated May 09, 1994, available at Annexure-H, a show cause notice came to be given, calling upon the petitioner to show cause as to why the construction of the additional 24 flats should not be removed. Annexure-I dated 9th May 1994 are the orders pronounced by the Jt. Secretary, Revenue Department, Govt. of Gujarat, saying that, there is no objection for the commercial use of some portion of some of the units. Then comes the show cause notice at Annexure-J dated January 04, 1995, calling upon the petitioner to show cause as to why the construction of additional 24 flats should not be declared as illegal and as to why the same should not be removed. Thereafter one has to see Annexure-K dated January 04, 1995, under

which the commercial use of some portion of certain units is permitted and the original orders are restored and the orders dated 9th May 1994 are set aside. Thereafter once again come two notices, Annexure-L and Annexure-M, bearing even date, that is July 23, 1996. These two notices once again are meant to reopen both the questions, namely the commercial use of some of the portion of some of the units and the other question regarding the construction of 24 additional flats. These two notices are under challenge in the present petition.

This petition also requires to be allowed on the parity of the reasoning adopted in the previous petition. These two annexures which at a first glance would appear as the show cause notice simplicitor certain decisions have been taken. Even if it is argued that no decision is taken, then also it shall have to be accepted that, time and again there are the orders in favour of the unit holders of the petitioner under which the commercial use qua some of the units has been regularised and there has been the recognition on the part of the authorities concerned that the petitioner would be entitled to have additional 24 flats, regard being had to the acquisition of more F S L. These two documents therefore require to be quashed and set aside on the ground that, they not only seek to reopen the already concluded chapter by the authorities under the ULC Act, but that, they proceed on certain assumptions, both factual and legal, which are not sustainable. This petition also therefore requires to be allowed and the above said two annexures, namely Annexure-L and M bearing even date of July 23, 1996 are hereby ordered to be quashed and set aside. The net effect of this decision would be that, the commercial use of small portion of some of the units and the construction of 24 additional flats shall stand regularised under the law. Rule is made absolute to this extent in this petition also.

No order as to cost in both the petitions.
